IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL COPY

No. 74-5369

WILLIE J. DANIEL

VERSUS

STATE OF LOUISIANA

Appeal from the Supreme Court
of the State of Louisiana

MOTION TO DISMISS

WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL
STATE OF LOUISIANA

KENDALL L. VICK
ASSISTANT ATTORNEY GENERAL
STATE OF LOUISIANA

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WOODROW W. ERWIN
DISTRICT ATTORNEY
22ND JUDICIAL DISTRICT

JULIAN J. RODRIGUE
ASSISTANT DISTRICT ATTORNEY
22ND JUDICIAL DISTRICT

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Now into Court comes the State of Louisiana, through the undersigned Assistant Attorney General of the State of Louisiana, and pursuant to Rule 16 of the Rules of the Supreme Court of the United States moves this Honorable Court to dismiss the appeal in the above numbered and entitled cause of action for the following reason, to-wit:

The identical issues were briefed and argued to the Court on October 16, 1974 in Taylor v. Louisiana, No. 73-5744. The Taylor case was argued in tandem with Edwards v. Healy, No. 73-759 which involved substantially similar issues.

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The identical issues were briefed and argued to the Court on October 16, 1974 in Taylor v. Louisiana, No. 73-5744. The Taylor case was argued in tandem with Edwards v. Healy, No. 73-759 which involved substantially similar issues. Healy was a direct appeal from a three-judge court in the Eastern District of Louisiana that had declared unconstitutional Art. 7, Section 41 of the 1921 Constitution of Louisiana, LSA R.S. 13:3055, and Art. 402 of the Louisiana Code of Criminal Procedure. The three-judge court in Healy also

overruled Hoyt v. Florida, 368 U. S. 57 (1961).

All three of these cases necessarily relate to the existence of Louisiana laws exempting women from service on juries. Pursuant to Act 2 of 1972 of the Louisiana Legislature, a constitutional convention convened on January 5, 1973, for the purpose of framing a new constitution for the State of Louisiana. The constitution drafted by this convention was submitted to and adopted by the citizens of Louisiana at a special election held on April 20, 1974. The new constitution becomes effective at midnight on December 31, 1974. Article V. Section 33 of the new constitution relates to juror qualifications and reads as follows:

> (A) Qualifications -- A citizen of the state who has reached the age of majority is eligible to serve as a juror within the parish in which he is domiciled. The legislature may provide additional qualifications.
>
> (B) Exemptions -- The Supreme Court shall provide by rule for exemption of jurors.

This article does not exempt any persons who have reached the age of majority from jury service.

It is thus apparent that there is no occasion for this Court to pass upon questions which have relevance only to state constitutional and statutory provisions that have been abandoned.

See Supplemental Brief of Appellants Suggesting

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> This article does not exempt any persons who have reached the age of majority from jury service.

It is thus apparent that there is no occasion for this Court to pass upon questions which have relevance only to state constitutional and statutory provisions that have been abandoned.

See Supplemental Brief of Appellants Suggesting That The Cause in Moot in Edwards v. Healy, No. 73-759 filed October 15, 1974; Second Supplemental Brief in Edwards v. Healy, No. 73-759 filed November 20, 1974 and letter to the Honorable Michael Rodak, Jr., Clerk of the Supreme Court of

the United States, In RE Edwards v. Healy, dated December 6, 1974.

For this reason, appellants suggest that the issues sought to be raised will be moot, and that the appeal should be dismissed on that ground. Furthermore, the appellant in the instant case has made no showing of prejudice by the exclusion of women from the jury. As this Court stated in Tucker v. Michigan, _____ U. S. _____, 94 S. Ct. 2357 (1974), "... the law does not require that a defendant receive a perfect trial, only a fair one ..." 94 S. Ct. at 2365.

Respectfully submitted,

WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL
STATE OF LOUISIANA

KENDALL L. VICK
ASSISTANT ATTORNEY GENERAL
STATE OF LOUISIANA

WOODROW W. ERWIN
DISTRICT ATTORNEY
22ND JUDICIAL DISTRICT

JULIAN J. RODRIGUE
ASSISTANT DISTRICT ATTORNEY
22ND JUDICIAL DISTRICT

BY: _____
KENDALL L. VICK
ASSISTANT ATTORNEY GENERAL
DEPARTMENT OF JUSTICE
STATE OF LOUISIANA
7TH FLOOR
234 LOYOLA AVENUE
NEW ORLEANS, LOUISIANA 70112

OF THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

STATE OF LOUISIANA

VS. NO. 74-5369

WILLIE J. DANIEL

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Pursuant to Rule 53, paragraph 1, of the Rules of this Court, motion is hereby made that petitioner be allowed to proceed in forma pauperis. Petitioner affidavit will be sent under separate cover and counsel for petitioner requests that it be attached to this motion.

RESPECTFULLY SUBMITTED:

Roy L. Wood

Roy L. Wood
Attorney for Willie Daniel
P.O. Box 715, Amite, Louisiana
504-748-2601

PROOF OF SERVICE

I, Roy L. Wood, attorney of record for Willie J. Daniel, appellant, and a member of the bar of the United States Supreme Court, hereby certifies that I have mailed, postage pre-paid, first class mail, a copy of the foregoing motion to Mr.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Pursuant to Rule 53, paragraph 1, of the Rules of this Court, motion is hereby made that petitioner be allowed to proceed in forma pauperis. Petitioner affidavit will be sent under separate cover and counsel for petitioner requests that it be attached to this motion.

RESPECTFULLY SUBMITTED:

Roy L. Wood

Roy L. Wood
Attorney for Willie Daniel
P.O. Box 715, Amite, Louisiana
504-748-2601

PROOF OF SERVICE

I, Roy L. Wood, attorney of record for Willie J. Daniel, appellant, and a member of the bar of the United States Supreme Court, hereby certifies that I have mailed, postage prepaid, first class mail, a copy of the foregoing motion to Mr. Julian Rodrigue, Assistant District Attorney, Parish of St. Tammany, Covington, Louisiana, by mailing same to his office and to William J. Guste, Jr., Attorney General, State of Louisiana, by mailing same to his office in the State Capitol Building, Baton Rouge, Louisiana. I further certify that all parties required to be served have been served.

Amite, Louisiana, this 3rd day of October, 1974.

Roy L. Wood

Roy L. Wood

IN THE SUPREME COURT OF THE UNITED STATES

STATE OF LOUISIANA *

VERSUS * NO. 74 - 5369

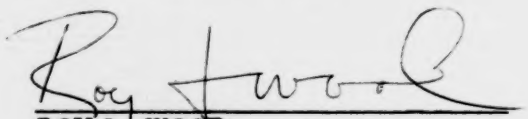
WILLIE J. DANIEL *

****

TO THE HONORABLE CLERK OF THE SUPREME COURT OF THE UNITED STATES

Please enter my appearance as counsel for the Appellant, Willie J. Daniel.

RESPECTFULLY SUBMITTED:



ROY L. WOOD
Post Office Box 715
Amite, Louisiana 70422
(504) 748-2601

PROOF OF SERVICE

I, Roy L. Wood, attorney of record for Willie J. Daniel, Appellant, and a member of the Bar of the United States Supreme Court, hereby certify that I have mailed, postage prepaid, first class mail, a copy of the above to Mr. Julian A. Rodrigue, Assistant District Attorney for the Parish of St. Tammany, by mailing same to his office, and to William J. Guste, Jr., Attorney General of the State of Louisiana, by mailing to his office in the State Capitol Building, Baton Rouge, Louisiana. I further certify that all parties required

to be served have been served.

Amite, Louisiana, this 30th day of September, 1974.

Roy L. Wood

ROY L. WOOD